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UNCLAS SECTION 01 OF 02 ABUJA 000698

SIPDIS

SENSITIVE

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SUBJECT: DRAFT ELECTORAL ACT REVISION--NET NEGATIVE,
MISSED OPPORTUNITIES, BAD SIGN FOR 2007 ELECTIONS

REF: 04 ABUJA 1939

1. (SBU) SUMMARY: Two years after Nigeria's greatly flawed 2003 and 2004 elections, a draft bill revising the Electoral Act is moving to committee in the National Assembly on its second reading. The net of what is in the draft is a slight step backwards in terms of the many serious concerns raised in the 2003 and 2004 Human Rights Reports, although the bill does provide some benefits on other areas, such as assisting voters with disabilities. The draft bill does not, however, create the conditions for Nigeria to attain free and fair elections, and that opportunity cost may be more important than what the bill does say. Getting this revision right is important, as it is likely to be the last revision before Nigeria goes to the presidential, gubernatorial and legislative polls in 2007. END SUMMARY.

2. (U) The 2003 and 2004 Human Rights Reports list a wide array of problems from nationwide elections in those years, and judicial challenges to many of the election results -- including President Obasanjo's election -- are still in the courts. The Independent National Electoral Commission (INEC) drafted a bill to reform the 2002 Electoral Act's flaws, in an effort to provide ground rules for free and fair elections in 2007. The bill was presented in the National Assembly in December 2004, and is being sent to committees for discussion/revision now after its second reading.

3. (SBU) Our analysis is that the present draft will not improve the chances for free and fair elections in 2007. The bill does not address many of the issues that it could have addressed without revising the constitution, and there will not likely be another revision to the Electoral Act before the 2007 elections. The net of positive and negative changes that did make it into the draft are a slight step backwards in terms of the problems noted in the Human Rights Reports. There are some improvements on other issues, notably assisting voters with disabilities, but some other would-be positives such as more INEC powers over party finances are negatives as long as bill does not strengthen the independence of the "Independent" National Electoral Commission from the ruling party.

NEGATIVES IN THE BILL

4. (SBU) The bill adds a new Part II on INEC's staff but omits any mention that the staff should not be partisan, reinforcing INEC's public contention that the staff is not covered by any legal requirement to be independent in political terms. The chairman of INEC's legal committee, Commissioner Abubakar, told an April 14 publicly-televised seminar on the bill that the constitution separates staff from the Chairman and Commissioners, and INEC sees no need for the Electoral bill to extend to INEC staff the legal requirements it makes of the INEC Chairman and Commissioners.

5. (SBU) The bill does little to make the Chairman or Commissioners independent either. The constitution says they are appointed by the President and confirmed by the Senate, and the Electoral Act sets procedures and standards for doing so. INEC says it decided not to seek a constitutional amendment on the President appointing and Senate confirming, arguing there is too little time before the 2007 election. The bill keeps the Election Act procedures vague. No Senate debate is required before confirmation, for example, nor is the President's putting nominees up for public comment before appointing them, nor even consultation with political parties on candidates. The bill also keeps INEC's narrow legal standard for independence -- that the Chairman and Commissioners only must not be GON officials holding elective office or members of a political party -- and does not change INEC's public interpretation of it that any party that challenges the independence of a commissioner must provide the other

party's membership roll for the specific day that the commissioner was working for INEC (reftel).

16. (SBU) COMMENT: INEC may not have known at the time that the Presidency would call a national conference to debate changes in 2005-6, including constitutional amendments. The national conference is now looking at amending various parts of the constitution (septel), but making INEC more independent is not among them. END COMMENT.

17. (SBU) The draft bill keeps the overly large number of levels where election returns are collated and announced before the final figures are declared, a major problem in 2003. There were widespread fraud accusations when figures announced at one level did not match the total of figures reported at levels below. The draft bill also does not give access to those different collation levels for political party representatives, domestic observers and international observers.

18. (SBU) The bill keeps INEC on the side of "winning" candidates in election challenges, instead of giving it a neutral or "friend of the court" role helping election tribunals find the truth. INEC Commissioner Abubakar told the same public seminar above that the Electoral Act and not the constitution made INEC a defendant instead of neutral, and that INEC recognized this affected both its neutrality and independence. "Perhaps the National Assembly can change that," he commented. (COMMENT: As noted in the Human Rights Reports, INEC's making itself a defendant in Nigeria's common law-based adversarial court system has given INEC an interest in not cooperating with the courts, with extremely troublesome effect. END COMMENT.)

19. (SBU) The bill deletes the provision in the Electoral Act of 2002 that no general election shall be conducted before INEC has concluded compilation and updating of the National Voters Register. INEC told the tribunal hearing Buhari's challenge to the 2003 presidential election that it could not provide the court a copy of the Register (which Buhari's suit was challenging) because the Register had not been completed. The new bill merely stops registration 120 days before the election and allows no changes from 60 days before the election. It is silent on what happens if the National Voters Register has not been compiled by the election.

POSITIVES IN THE BILL

10. (SBU) There is only one positive in the bill, continuous voter registration, that affects any of the many problems noted in the 2003 and 2004 Human Rights Reports. Post is not sure whether that Register was completed or not, given INEC's court testimony, but Nigerians certainly had problems registering to vote. The bill's provision for rolling registration should help solve those problems.

11. (SBU) The bill tackles some areas that did not figure in the Human Rights Reports, providing hortatory language that INEC can "take reasonable steps to ensure that voters with disabilities are assisted at the polling place by the provision of suitable means of communication, such as Braille." The bill also requires that government-owned print or electronic media should give equal access on a daily basis to all registered political parties and candidates.

POLITICAL PARTY FINANCES

12. (SBU) Political party finances does not figure among the many election problems the Human Rights Reports outlined in Nigeria, but it has long been on the list of President Obasanjo, INEC, and many in the NGO community. The draft bill gives INEC extensive powers to audit contributions and expenditures of political parties, sets limits on both, and sets fines and imprisonment (and thus barring from elections) for those who violate its limits. While this may work if the political parties accept it, they are unlikely to do so while the INEC that administers the system is still not independent. Indeed, the added rules for INEC to supervise party finances may become a major problem if they are used to intimidate or harass opposition parties.

CAMPBELL